

IN THE INCOME TAX APPELLATE TRIBUNAL  
PANAJI BENCH, PANAJI  
(AT e-Court, PUNE)

BEFORE SHRI R.S. SYAL, VICE PRESIDENT AND  
SHRI PARTHA SARATHI CHAUDHURY, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.24/PAN/2022

निर्धारण वर्ष / Assessment Year : 2017-18

M/s. Hotel New Niyaz, 4697/B, Opp. Market Police Station, P.B. Road, Belgaum – 590 005 Karnataka PAN : AACFH0361D	Vs.	ACIT, Circle-2(1), Belgaum
Appellant		Respondent

Assessee by Shri Rakesh Joshi  
Revenue by Shri Prabhakar Anand DJ

Date of hearing 06-07-2023  
Date of pronouncement 07-07-2023

आदेश / ORDER

PER R.S. SYAL, VP :

This appeal by the assessee is directed against the order 23-02-2022 passed by the CIT(A)-2, Panaji in relation to the assessment years 2017-18.

2. The first issue raised in this appeal is against the confirmation of addition of Rs.5,66,25,097/- made by the Assessing Officer (AO).

3. Briefly stated, the facts of the case are that the assessee is a partnership firm engaged in the business of Hotel. A survey action was taken u/s.133A of the Act on 18-07-2017, which transpired that

the assessee was indulging in recording reduced amount of turnover in regular books of account. During the course of survey, laptop of Mr. Lilesh Sabnis, Administrative Head of the Hotel, was inspected and excel sheets listing the actual daily sales registered at the Restaurant were recovered. These figures found as Daily Sales in Daily Sales Report (DSR) were then matched with the subsequent entries made in the Tally Accounting programme for recording in the books of account. Huge variations were found in the sales figures actually registered at the hotel and the figures as considered for final accounting. The AO has reproduced the figures [Inventorized at S. No. 3 (Pg. No. 90) of Annexure: A-1/01dated 18/07/17] of sales for the months February, 2017 to July, 2017 as per Tally and as per DSR along with difference of Rs.1,57,78,913/-. Date-wise difference [Inventorized at S. No. 3 (Pg. No. 84) of Annexure: A-1/01dated 18/07/17] from 01-06-2017 to 30-06-2017 has also been captured giving figures as per Tally, DSR and difference on daily basis. It was learnt during the course of survey that the assessee and its branches and franchises were using software provided by Bangalore based company, IDS, for billing and accounting. On enquiry from the software company, it was revealed that there was a provision to delete the recorded bills by

giving a particular command. Due to this command, the quantum of sales, after such deletion process, reduces drastically portraying the sales much less than the actual sale proceeds. Statement of Mr. Lilesh Sabnis was recorded in which he admitted that only 60 to 70% of the sale proceeds were bring deposited in the bank accounts and there was suppression of remaining 30 to 40% of sales. He further informed that the deletion command in the software was normally executed by Imran Desai (Accounts executive) and himself. The statement of Mr. Lilesh Sabnis was confronted to Mr. Niyaz Husain Soudagar, the partner, who confirmed that the data of suppression of sales, as obtained from the laptop of Mr. Lilesh Sabnis, was genuine and correct. He also admitted suppression of sales to the tune of 30% and further that such practice of suppression of sales was going on for the past six to seven years. On this basis and taking 30% sales as unrecorded, the amount of suppressed turnover was computed by the survey team. Despite admission of unrecorded sale, the assessee did not include such amount in the return of income. During the course of assessment proceedings, a notice was issued u/s.143 to the assessee on 20-09-2018 with a request to produce the documents/evidence in support of its claim in the income-tax return. The AO gave several

opportunities, as have been recorded on page 9 of the assessment order, but there was no response from the side of the assessee. Thereafter, the assessee requested JCIT, Range-2, Belagavi to issue directions to the AO u/s.144A of the Act for completing the assessment in accordance with law and for making a reference to the valuation officer for determining and estimating the cost of construction of building. The JCIT, in his direction dt. 30-11-2018, observed that the assessee was adopting delaying tactics to avoid the completion of assessment. However, to meet the principles of natural justice, he allowed the assessee to explain his case before the AO by 11-12-2018. The assessee's contentions that copies of the impounded material were not served on it or the adequate time was not given for explaining the same, were rejected by the JCIT. Pursuant to the direction u/s.144A, the AO again gave opportunity to the assessee. Instead of making any fresh submissions, the assessee reiterated same things that the copy of impounded material was provided too late; copy of impounded material relating to another group company, namely, NI Associates was not provided; the data in the hard disk was huge and there was no time to analyse the same; the owner was not from the accounting background; and the statement was made under duress. Considering all these facts

and non co-operative attitude of the assessee, the AO rejected the assessee's contentions. He further found that there was some arithmetical error committed during the course of survey proceedings inasmuch as the assessee, in the statement under oath, had admitted concealed income of Rs.3,37,62,249/- for the A.Y. 2017-18. However, at the time of survey, the additional income was calculated on turnover declared by the assessee which was 70% of the actual turnover. In his opinion, the sales declared were 70% and 30% of unrecorded sales ought to have been considered on the gross amount at 100% and not at 70%. He, therefore, computed the further additional income in this manner at Rs.2,28,62,148/-. Considering the fact that the assessee admitted to have claimed full deductions of expenses in the regular books of account, he made an addition of Rs.5,66,25,097/-. The Id. CIT(A) echoed the assessment order, against which the assessee has approached the Tribunal.

4. We have heard the rival submissions and gone through the relevant material on record. During the course of survey, inspection of the laptop of Mr. Lilesh Sabnis, Administrative Head, was carried out, which transpired excel sheets mentioning the amount of actual daily sales in DSR and the amount as per Tally Accounting programme, going in to the books of account. There was huge

difference in these two figures. Mr. Lilesh Sabnis admitted that roughly 30% of the sales were not recorded in the books of account and that the software enabled the assessee-hotel to delete items of sales at a later stage after recording. When this position was confronted to the partner of the assessee firm, Mr. Niyaz Husain Saudagar also admitted that the unaccounted sales were approximately 30% of gross accounted sales, which practice was going to for last more than 6 to 7 years. It is on the basis of such evidence found during the course of survey from the laptop of Mr. Lilesh Sabnis, that the partner of the assessee firm also admitted the non-recording of sales by 30% in Tally software as against the actual sales at higher level. It was further admitted that all the expenses relating to hotel were properly recorded in the books of account. It was only the sales aspect which was partly recorded. Though the assessee admitted such undisclosed income during the course of survey, but did not offer the same in the return of income. During the course of assessment proceedings, the AO issued several notices to the assessee requesting it to furnish details because the amount of the agreed suppressed turnover at the time of survey was not offered for taxation. Details of such notices have been tabulated at page 9 of the assessment order. In fact, the AO issued 8 notices,

all of which remained uncomplied with. The assessee approached the JCIT u/s.144A contending that it was not served with the relevant impounded documents. Such contention of the assessee was rejected on the ground that all the documents relied on by the AO were the statements of Mr. Lilesh Sabnis and the other partners and there was nothing which was unknown to the assessee. Similar contention raised on behalf of the assessee before the Tribunal also does not carry any force because these are the statements of the partners of the assessee firm and that of its Manager, which was duly confronted to the partners during the course of survey. On a specific query, the Id. AR admitted that no part of the statement of Mr. Lilesh Sabnis or the partner etc., has been used against the assessee that was not confronted inasmuch as the addition is based on the excel sheets in the Laptop of Mr. Lilesh Sabnis, the contents of which were duly admitted by Mr. Lilesh Sabnis as correct which was re-affirmed by the partners of the assessee firm.

5. It is pertinent to note that Shri Niyaz Husain Soudagar in his statement u/s 131 confirmed the fact that there was deletion of bills from IDS software everyday and also accepted that 30% of total sales had not been considered in the books of account of the firm. In answer to question no 11, he admitted that all the direct and indirect

expenses were duly accounted for in the books of the assessee. It is borne out from the written submissions of the assessee before the Id. CIT(A), copy at page 1 onward of the paper book (relevant page is 15), that the other partner, Sh. Irshad Soudagar, also admitted the suppression of sales. The contention raised before the Tribunal that the partners were not from accounting background, in our opinion, does not reduce the value of the statements in any manner about the suppression of sales as they were running the business and further the suppression of sales is a factual matter, whose knowledge does not need any formal education. The further contention about the retraction from the statements at the time of filing returns, that is, after more than a year from making the statements, is of no consequence. Retraction, in order to be valid, must be made in short time from the statement and the fact that the statements were obtained in duress etc. must be brought to the notice of the higher authorities. Both the factors are absent in this case. Further, statements of the parties admitting suppression of sales is not in vacuum. It followed after the excel sheets from the laptop of Shri Lilesh Sabnis clearly recorded the varying figures of sales as per Tally and DSR and also the `Difference`.

6. The contention that the evidence of suppression of sales in the laptop was for a part of the year and not for the whole year and hence the extrapolation of suppression to the remaining part of the year was not valid, is without substance. Here is a case in which the evidence of suppression of sales was found from the laptop for six months (February 2017 to July, 2017) and not only the manager but also the partners of the assessee firm admitted such suppression for 6-7 years. In such circumstances, the estimate of suppression of sales for the remaining part of the year cannot be considered as unlawful. The Hon'ble jurisdictional High Court in *Harish Textile Engrs. Ltd. VS. DCIT (2015) 379 ITR 160 (Bom)* has held that when there was evidence available on record indicating receipt of 'on money' particularly for the period 1989 to 1996 on the sale of Stenter machines, it could not be said that there was no evidence on record for the authorities to come to a conclusion that 'on money' was received by the appellant for the other period as well. In *Surinder Kumar VS. CIT (2012) 340 ITR 173 (P&H)* where the seized record showed unrecorded sales on different dates, it was held that estimation of the AO on that basis for the entire year was not invalid. In view of the prevailing facts and the legal position as discussed supra, there can be no reason to find fault with the AO in

estimating the suppression of sale for rest of the year on the basis of evidence found indicating the suppression for six months. We, ergo, uphold the view point of the lower authorities to the extent of difference in sales at Rs.3,37,62,249/-. The addition is confirmed to this extent.

7. The AO has noted arithmetical error and enhanced the addition by Rs.2,28,62,148/- on the ground that 30% of suppressed sales ought to have been computed on gross of recorded sales of 70%, that is, 100%, and not of 70%. In this regard, it is observed that the basis of 30% addition is the statement of the partners and the manger of the assessee firm. As such, we need to focus on their statements as to whether 30% was of 70% or grossed-up 100%. It is seen from the statement of Mr. Lilesh Sabnis, as recorded on page 6 of the assessment order to the effect: `Considering these figures, unaccounted sales is approx. 30% of Gross Accounted Sales. This is normal practice followed in the restaurant for more than 6-7 years'. Thereafter, Mr. Niyaz Husain Saudagar, the partner of the assessee firm also admitted: `unaccounted sales of around 30% of total accounted sales'. This shows that the unaccounted sales were 30% of the accounted sales only. In our considered opinion, the survey team rightly calculated the amount of unaccounted sales and

the AO, despite recording the relevant parts of the statements in assessment order, went wrong in computing the arithmetical error for making enhancement in the addition by Rs.2.28 crore. Such enhancement made by the AO and sustained in the first appeal, is therefore, deleted. In the ultimate analysis, we confirm the addition to the tune of Rs.3,37,62,949/- on this score.

8. The only other issue raised in this appeal is against the confirmation of addition made by the AO u/s.68 of the Act. The facts apropos this issue are that the assessee had shown unsecured loans of Rs.3,46,76,831/-, representing closing balance of the partners. In the absence of any submission coming from the side of the assessee, the AO treated such amounts as unexplained cash credit u/s.68 of the Act. The Id. CIT(A) observed that there were opening balances of Rs.1,33,45,285/- in these accounts with closing balance at Rs.3.46 crore. He, therefore, held that the addition could be made only for the transactions pertaining to the year amounting to Rs.2,59,91,906/- and not of the opening balances as well. He further allowed a credit of Rs.25.00 lakh against the remaining addition in respect of declared undisclosed income under Income Declaration Scheme, 2006 (IDS) by the firm.

9. The Id. AR submitted that the partners of the assessee firm had also made declarations and all the necessary details filed in that respect remained unconsidered. It was submitted that declarations made by the partners under IDS, on which taxes were paid, when brought in the assessee firm as capital contribution, should not have been added once again by the AO.

10. We agree, in principle, with the submission that if certain amount is surrendered for taxation under the IDS after paying the requisite taxes, then such amount, on its utilization, cannot be subjected to tax. However, the onus always remains on the assessee to prove the nexus between the income surrendered under the IDS and that credited to the respective accounts. In the instant case, there is no discussion on this issue either by the AO or the Id. CIT(A). As such, we set-aside the impugned order and remit the matter to the file of the AO for, firstly, re-examining the amount of income declared by the partners under IDS and then, verifying as to whether such income declared was brought to the assessee firm or utilized elsewhere. The assessee will be entitled to relief only to the extent of utilization of such declared income brought in the assessee-firm as their respective capitals. If such nexus is absent, then the AO will decide the issue as per law. Needless to say, the

assessee will be allowed reasonable opportunity of hearing in this regard.

11. In the result, the appeal is partly allowed.

Order pronounced in the Open Court on 07<sup>th</sup> July, 2023.

Sd/- (PARTHA SARATHI CHAUDHURY) JUDICIAL MEMBER	Sd/- (R.S.SYAL) VICE PRESIDENT
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पुणे Pune; दिनांक Dated : 07<sup>th</sup> July, 2023  
सतीश

**आदेश की प्रतिलिपि □ प्रेषित/Copy of the Order is forwarded to:**

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The respondent
3. The Pr.CIT concerned
4. DR, ITAT, Panaji Bench, Panaji
5. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

**// True Copy //**

Senior Private Secretary  
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	06-07-2023	Sr.PS
2.	Draft placed before author	07-07-2023	Sr.PS
3.	Draft proposed & placed before the second member		JM
4.	Draft discussed/approved by Second Member.		JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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